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CITATIONS

Cases:

351-726—69——1

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL., PETITIONERS

v.

AETNA CASUALTY AND SURETY COMPANY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to this Court's order of April 2, inviting the parties and the Solicitor General, as *amicus curiae,* to discuss the following question:

> In light of the cases in this Court relating to the limits of admiralty jurisdiction, such as *Phoenix Construction Co.* v. *The Steamer Poughkeepsie,* 212 U.S. 558, affirming 162 F. 494 (1908 D.C. S.D. N.Y.), and in light of the language and legislative history of the Outer Continental Shelf Lands Act, does the Death on the High Seas Act apply to these accidents? See *Pure Oil Co.* v. *Snipes,* 293 F. 2d 60 (C.A. 5th Cir., 1961).

STATUTES INVOLVED

The Death on the High Seas Act provides in pertinent part:

> 46 U.S.C. 761. *Right of action; where and by whom brought.*
>
> Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

The Outer Continental Shelf Lands Act provides in relevant part:

> 43 U.S.C. 1332. *Congressional declaration of policy; jurisdiction; construction.*
>
> (a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.
>
> (b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

43 U.S.C. 1333. *Laws and regulations governing lands—Constitution and United States laws; laws of adjacent States; publication of projected States lines; restriction on State taxation and jurisdiction.*

(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of [August 7, 1953] are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining

each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the Outer Continental Shelf.

* * * * *

(b) *Jurisdiction of United States district courts.* The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the Outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the Outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

STATEMENT

These cases arose out of fatal accidents occurring on or adjacent to stationary oil drilling platforms located in the Gulf of Mexico, on the Outer Continental Shelf, more than 25 miles south of the Louisiana coastline.

Petitioner Dore's decedent, an oil company employee, was operating a crane on the drilling platform which was being used to unload a barge lying alongside the platform. While a load was being lifted, the crane toppled over and fell, carrying Mr. Dore some 60 feet to the deck on the barge below, where he was

killed. See *Dore* v. *Link Belt Company*, 391 F. 2d 671, 673, n. 4 (C.A. 5).

Petitioner Rodrigue's decedent, an employee of a hydraulic testing company, died of injuries sustained in a fall from the top of an oil derrick to the floor of an offshore platform on which the derrick had been constructed.

In each case, the petitioner filed actions in the district court under both the Louisiana Wrongful Death Act and the Death on the High Seas Act, and the district court dismissed the claims based on the State statute. The court of appeals held in *Dore* that the Death on the High Seas Act provided the exclusive remedy for the accident, and affirmed in *Rodrigue* on the authority of *Dore*. The petition for certiorari presented the question whether the Death on the High Seas Act affords the exclusive remedy for death on an artificial structure on the outer continental shelf, or whether the recovery permitted for State-created causes of action may also be had.

ARGUMENT

The question posed by the Court is whether, in the light of its decisions defining the limits of admiralty jurisdiction and the language and legislative history of the Outer Continental Shelf Lands Act, the Death on the High Seas Act applies to the accidents involved in this case.[1] As developed in this memorandum, we

[1] In holding that the Death on the High Seas Act (46 U.S.C. 761–768) was applicable to the accident in the *Dore* case, the court of appeals relied in part on its earlier decisions that Congress intended through the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343) that federal maritime law should be

believe that the question should be answered affirmatively. Our analysis, however, has led us to conclude that the determination whether the Death Act so applies also requires consideration of whether it applied prior to the enactment of the Outer Continental Shelf Lands Act.

Our conclusion, set forth in Point I, below, is that the Outer Continental Shelf Lands Act did not affect, one way or the other, the applicability of the Death Act to accidents occurring on platforms on the outer continental shelf. In our view, therefore, the question is whether the Death Act by its own force applies to these accidents; in Point II we conclude that it does. Finally, in Point III, we argue that it would be consistent with the traditional limits of admiralty jurisdiction to apply the Death Act to these accidents.

I. IN THE OUTER CONTINENTAL SHELF LANDS ACT CONGRESS DID NOT CHANGE THE COVERAGE OF THE DEATH ON THE HIGH SEAS ACT

The Outer Continental Shelf Lands Act was enacted in 1953 in order to facilitate the prudent extraction of the large sources of oil and gas which were submerged off the nation's shores.[2] The Act authorizes

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applied in suits for injuries sustained on platforms located on the continental shelf (A. 57–59). *Pure Oil Co.* v. *Snipes*, 293 F. 2d 60 (C.A. 5); *Ocean Drilling & Exp. Co.* v. *Berry Bros. Oilfield Service*, 377 F. 2d 511 (C.A. 5); *Loffland Bros. Co.* v. *Roberts*, 386 F. 2d 540 (C.A. 5), certiorari denied, 389 U.S. 1040; *Movible Offshore Co.* v. *Ousley*, 346 F. 2d 870 (C.A. 5).

[2] See H. Rep. No. 413, 83rd Cong., 1st Sess.

In the 1940's, several States had undertaken to grant leasing

the Secretary of the Interior to promulgate regulations governing exploration and removal of natural resources and to enter into mineral leases on behalf

and development rights in these offshore locations, both within and outside three miles of the coastline. That practice was terminated in 1947 when this Court, upholding the paramount right of the United States to the natural resources in the entire continental shelf, ruled that the States were without power to grant rights to, or authorize extraction of, minerals on the shelf even inside the three-mile zone. *United States* v. *California*, 332 U.S. 19. Three years later the preeminent nature of the federal interest in such resources was reaffirmed. *United States* v. *Louisiana*, 339 U.S. 699; *United States* v. *Texas*, 339 U.S. 707.

Early in 1953, concerned with the discontinuance of offshore oil and gas development resulting in part from the decision in the *California* case, Congress enacted the Submerged Lands Act, 43 U.S.C. 1301–1315, ceding all rights in the submerged lands and resources within State boundaries (with certain exceptions) to the several States or their lessees. For that purpose, State boundaries were limited to a distance of three miles from the coast or, in certain circumstances later held to exist only as to Texas and Florida, nine miles in the Gulf of Mexico. The Outer Continental Shelf Lands Act provided for federal administration and leasing of the submerged lands and resources appertaining to the United States, seaward of those given to the States.

The continental shelf is the submerged portion of the North American continent extending seaward from the shoreline. Along the Atlantic Coast the shelf extends out as much as 250 miles, and about 200 miles in the Gulf of Mexico. The total area of the shelf adjacent to coastal states (including Alaska) is about 900,000 square miles. The part of the shelf which lies within the belt over which the States were given control under the Submerged Lands Act contains about 30,000 square miles. The *outer* continental shelf (outside the area given to the States) is subject to the Outer Continental Shelf Lands Act and includes about 97 percent of the total area.

of the United States (43 U.S.C. 1334, 1337). Authority to promulgate and enforce safety regulations for artificial islands and other structures is given to the United States Coast Guard (43 U.S.C. 1333(e)).

Section 4(a)(1) of the Act, 43 U.S.C. 1333(a)(1), which is principally involved here, adopts federal law as the primary source of law for the outer continental shelf:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon * * *.

As a supplement to federal law, the Act extends State law to the shelf on the following conditions (Section 4(a)(2), 43 U.S.C. 1333(a)(2)):

> To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of [August 7, 1953] are declared to be the law of the United States for * * * the outer Continental Shelf, and artificial islands and fixed structures erected thereon * * *.

On its face, therefore, Section 4(a) of the Act does not purport to authorize or require the application of any federal law beyond the transaction to which it ordinarily would apply. That this was the intention of the Congress, particularly with respect

to the maritime law, is shown by the evolution of Section 4(a).[3]

In the original bill introduced in the Senate, Section 4(a) specifically provided that the laws applicable to United States vessels on the high seas should be applied to acts occurring on offshore platforms.[4] If the Congress had enacted that provision, there would be little doubt that the Death Act would apply when fatal injuries were received on a drilling platform, without further inquiry into whether the accident otherwise would have been within the maritime tort jurisdiction.[5]

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[3] Congress specified that the Act applies only to the *seabed* and *subsoil* and the *structures* erected in the waters of the continental shelf. It expressly disclaimed any intention to alter the high seas nature of the water above the shelf, or to claim any jurisdiction over the water itself. "This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected" (43 U.S.C. 1332(b)). See S. Rep. No. 411, 83d Cong., 1st Sess., p. 2.

[4] The original Section 4(a) provided as follows (S. Rep. No. 411, 83d Cong., 1st Sess., p. 15):

"Sec. 4(a). All acts occurring and all offenses committed on any structure (other than a vessel), which is located on the outer Continental Shelf or on the waters above the outer Continental Shelf for the purpose of exploring for, developing, or removing the natural resources of the subsoil or seabed of such outer Continental Shelf, shall be deemed to have occurred or been committed aboard a vessel of the United States on the high seas and shall be adjudicated and determined or adjudged and punished according to the laws relating to such acts or offenses occurring on vessels of the United States on the high seas."

[5] Peter Leroux of the Office of the Senate Legislative Counsel testified during the committee hearing that the "purpose of this subsection is to make the laws relating to civil acts and criminal offenses on vessels of the United States applicable to such

During the hearings, however, witnesses criticized the original version of Section 4(a) because it applied only to acts occurring on the offshore structures and thus did not cover operations conducted beneath the water on the seabed or in the subsoil (see, *e.g.*, Hearings on S. 1901, fn. 5, *supra*, at 642–644; S. Rep. No. 411, *supra*, at 23), and because the body of maritime law was too narrow to provide comprehensive regulation of the exploitation of the Outer Continental Shelf and to govern the activities of those who worked on and inhabited the offshore structures (*id.* at 645–648, 660, 663). The extension of maritime law to offshore structures was also specifically criticized as unnecessarily complicating the resolution of legal disputes (*id.* at 11, 16, 18–19, 44, 201, 264, 277–278, 645). Consequently, the Senate Interior Committee recom-

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acts and offenses occurring on platforms constructed on pilings set into the submerged land of the shelf or on floating platforms i such platforms are not considered to be vessels. Vessels are excepted here since these laws are already applicable to vessels." Hearings on S. 1901 before the Senate Committee on Interior and Insular Affairs, 83d Cong., 1st Sess., p. 8.

This view was shared by Senator Cordon, the acting chairman of the committee, who said:

> * * * [W]hen these individuals leave their vessels and board this structure, they are subject to the law that operates on the structure, which in this instance is the same law that operates on board a ship; but becomes that [*i.e.*, applicable to the structure] only because of this act (*id.* at 9).

Senator Cordon concluded that "To the extent the maritime law would apply with respect to the ship, it will apply with respect to the structure" (*id.* at 10). This interpretation was shared by then Assistant Attorney General Rankin, who viewed the section as intending to apply maritime law to the structures (*id.* at 644).

mended a new Section 4(a), enacted virtually without change, which deleted the reference to injuries occuring on structures, and instead extended to the outer continental shelf all of the "Constitution and laws" of the United States, and, as a supplement to federal law, the compatible laws of the adjacent States, see p. 8, *supra;* S. Rep. No. 411, *supra,* at 15; 99 Cong. Rec. 10500.

The subsequent legislative history does not focus on the revision of Section 4(a) in such a way as to make the intention of the Congress unmistakable. In some places, the deleted provision was described as "unnecessary" in light of the decision to extend all federal laws to the outer shelf. Under this view, the change was intended to broaden the section, but not to eliminate the prior provision making all federal maritime law applicable to the platforms.[6] On the other hand, several Senators viewed the change as going further;

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[6] As Senator Cordon, the acting chairman of the Interior Committee, explained on the Senate floor (99 Cong. Rec. 6963)—

> By the use of this particular approach it became unnecessary to make applicable to the structures, by [express] reference * * * either the maritime law or the social laws, as all those laws, so far as necessary, were made applicable by the extension of the whole body of Federal law to the area. * * *

The Senate Report similarly stated (S. Rep. No. 411, *supra*, at 23):

> Section 4(a) of the bill as introduced extended the maritime and admiralty laws of the United States to structures used in connection with mineral development on the outer shelf. It is stricken because the committee determined to extend jurisdiction over the whole of the seabed and the subsoil, as well as to operational structures.

they stated without objection during the debates that the revised Section was intended to eliminate an unwise attempt to extend maritime law to non-maritime matters, see 99 Cong. Rec. 7235 (Senator Ellender), 7258 (Senator Daniel), 7261 (Senator Long). Even in the absence of those comments, however, it would be difficult to discern an intention to extend maritime tort jurisdiction to offshore platforms from legislative proceedings in which the significant feature was the deletion of the language which sought to achieve that result. Rather, the more reasonable interpretation of the legislative history is that Congress intended to make no change in the existing reach of the Death on the High Seas Act, whatever it was.

II. THE DEATH ON THE HIGH SEAS ACT COVERS ACCIDENTS OCCURRING ON OFFSHORE DRILLING PLATFORMS

The language of the Death on the High Seas Act is broad enough to cover accidents occurring on offshore drilling platforms. The Act provides a right of action for death "caused by wrongful act, neglect, or default occurring on the high seas * * *." Offshore drilling platforms are completely surrounded by water, are attached to the bottom of the sea, are close to the surface of the water, have no direct physical connection with the shore, and can be reached only by water or air. An accident upon such a platform occurs "on the high seas" in much the same sense as one upon a ship traveling upon such seas. Moreover, in some respects these platforms have the essential attributes of ships. We understand that the platforms ordinarily are floated out (either as a unit or sometimes in sections) to the spot where they are attached to the bottom; that

such attachment often is made by the lowering of retractable legs; and that when the drilling at a particular site has been completed, the platform is disconnected from the bottom and is floated to a new location.

The question, therefore, is whether there is anything in either the history or purpose of the Death Act indicating that Congress intended the language to have a more restricted reach. Both of these factors, as well as the adverse consequences of holding the Act inapplicable to such platforms, require a negative answer.

1. The Death Act was enacted in response to the need for uniformity in the law governing the right to recover where fatal injuries were wrongfully inflicted on board a United States ship on the high seas.[7] Like the common law, the general maritime law, which is the basic source of law in federal admiralty proceedings, gives no cause of action for wrongful death.[8] Prior to 1920, in order to alleviate the harsh consequences of the absence of a federal death statute, maritime tort suits premised on the various State death statutes were entertained in actions at law in the State courts and in admiralty actions in the federal courts—the State statute being viewed as permissibly "supplementing" the maritime law for its purpose.[9] For reasons which are extensively detailed

[7] See generally, Hughes, *Death Actions in Admiralty*, 31 Yale L.J. 115 (1921); Magruder and Grout, *Wrongful Death Within the Admiralty Jurisdiction*, 35 Yale L.J. 395 (1926).

[8] See *The Harrisburg*, 119 U.S. 199.

[9] See The *Hamilton*, 207 U.S. 398; *Western Fuel Co.* v. *Garcia*, 257 U.S. 233; *The Tungus* v. *Skovgaard*, 358 U.S. 588; Magruder and Grout, *supra*, at 396–401.

elsewhere,[10] however, the application of State death acts was a highly unsatisfactory solution to the inadequacy of federal law: maritime law tort claims were subjected to the vagaries of the rights and limitations of the differing State statutes; courts were faced with the exceedingly difficult and sometimes paralyzing problem of selecting which State death act to apply—the law of State of registry of the decedent's vessel, the law of the domicile of the decedent, the law of the domicile of the owner of the decedent's vessel, or the law of the State of registry of a tortfeasor vessel; and litigants occasionally were denied any remedy because the court applied the law of a State which either did not have a death act, or whose death act was unavailable because of its statute of limitations or some other restriction.

"The Death on the High Seas Act was prompted, in large part, by the desire to put an end to the uncertainties attending the application of state statutes to deaths on the high seas. * * * [T]he scope of the Death on the High Seas Act, within the geographical area of its operation, was intended to be as broad as the tradional tort jurisdiction of admiralty. * * * [T]he purpose of the Act was to afford a uniform right of action for death resulting from wrongful acts within the admiralty jurisdiction, excepting state

[10] See Hughes, *supra*, at 116–117; Magruder and Grout, *supra*, at 409–423; Robinson, *Wrongful Death in Admiralty and the Conflict of Laws*, 36 Colum. L. Rev. 406 (1936); Comment, 55 Colum. L. Rev. 907–909 (1955); S. Rep. No. 216, 66th Cong., 1st Sess.; H. Rep. No. 674, 66th Cong., 2d Sess.

territorial waters." *Wilson* v. *Transocean Airlines,* 121 F. Supp. 85, 90, 92 (N.D. Calif.).[11]

It was generally agreed at the time the Death Act was enacted, and seems to be settled law today, that maritime tort jurisdiction depends on the place where the injury occurs; it applies to all injuries that occur upon navigable waters, even though maritime matters are not involved in the circumstances of the injury.[12] Thus, when Congress made the Death Act applicable to wrongful conduct "occurring on the high seas," it neither enlarged nor circumscribed the scope of maritime tort jurisdiction: maritime law applied to all injuries on board a vessel which, at that time, was the only type of injury that occurred on the high seas. There is no indication, however, that Congress sought to freeze the coverage of the Act to maritime structures as they were then known, *i.e.,* ships; rather, it appears that Congress intended to make the Act cover all accidents that would be within the scope of traditional admiralty tort jurisdiction. See *D'Aleman* v. *Pan American World Airways,* 259 F. 2d 493, 495 (C.A. 2), discussed *infra,* pp. 18–19.

Accidents occurring on platforms located on the open sea are within that jurisdiction. See, *e.g., Doullut & Williams Co.* v. *United States,* 268 U.S. 33, 35 (damage to pilings in the Mississippi River, which were "driven into the bottom of the river and * * * completely surrounded by navigable water and * * *

[11] The legislative history of the Death Act is set forth in the *Wilson* case, 121 F. Supp. at 88–90.

[12] See generally, Robinson, *Tort Jurisdiction in American Admirality,* 84 U. Pa. L. Rev. 716, 734–742 (1936); Magruder and Grout, *supra,* at 401–408; Comment, 55 Colum. L. Rev. 907, 918–919.

used exclusively as aids to navigation"); *Dixon* v. *Oosting*, 238 F. Supp. 25 (E.D. Va.). "[E]vents occurring on navigable waters" are "matters which traditionally have been within the cognizance of admiralty courts * * *" (*O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 41).

In the *Dixon* case, *supra*, the court, in holding that the Longshoremen's and Harbor Workers' Compensation Act applied to an injury suffered by a workman operating a pile driver in Chesapeake Bay, a mile and a half from shore, in connection with the construction of a bridge, stated (p. 29):

> An examination of this record fails to supply any evidence justifying a finding that the injury was not sustained upon the navigable waters of the United States. The "monster" was approximately one and one-half miles from the nearest land, sitting on piling, and totally unconnected with land or any extension of land. No one controverts the fact that the piles upon which the "monster" was resting were in the navigable waters of the United States. The only means of access to the work site was by boat. The "monster" was about 18 feet above the open water and was not attached or connected to any other portion of the partially completed roadway. * * * Unless the Longshoremen's Act must be so strictly construed as to mean that there can be no compensable injury unless the injured party comes in contact with the water—a statement that needs no citation of authority to refute—the injury was clearly compensable under the federal act.

Although the question in *Dixon* was whether the injury occurred "upon the navigable waters" (the jurisdictional standard of the Longshoremen's Act) rather than "on the high seas," the reasoning of the case equally supports the applicability of the Death Act to the injuries involved in the present case.

The exclusion of accidents occuring on offshore platforms from the coverage of the Death Act would result in many of the difficulties which, in the case of wrongful deaths aboard ship, prompted the Death Act itself; there is no reason to believe that if Congress had ever focused on the problem, it would have thus limited the Death Act. For example, if the Death Act were viewed as covering only those injuries on platforms that result from strictly maritime activities, with State law applicable to the rest, the courts would be required to engage in the same kind of futile "line drawing" that has so plagued the administration of the Longshoremen's Act and resulted in the so-called "twilight zone" of overlapping State and federal jurisdiction. Cf. *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114. If, on the other hand, the Death Act were wholly inapplicable, the result would be to make applicable to the platforms, under Section 4(a)(2) of the Outer Continental Shelf Land Act (*supra*, p. 3), the wrongful death statute of the coastal State within which the platform would be located if the boundaries of the State were extended to the outer edge of the shelf. This would subject the next-of-kin of deceased platform workers to the differing limitations that the various States may impose in wrongful death actions, such as the bar of contributory negli-

gence. Cf. *The Tungus* v. *Skovgaard,* 358 U.S. 588; *United Pilots Association* v. *Halecki,* 358 U.S. 613. In the Death Act, however, Congress manifested an intention to provide a uniform rule governing fatal accidents occurring on the high seas; it certainly did not intend to create little islands of State law in an area otherwise clearly covered by federal law. Indeed, in Section 4(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(c)), Congress specifically made the Longshoremen's Act applicable to such platforms; it is unlikely that it would have done so if it had not contemplated that the Death Act was ~~not~~ already applicable to them.

2. The applicability of the Death on the High Seas Act to accidents on offshore drilling platforms is further supported by the cases that have applied that Act to aircraft accidents occurring over international waters, without regard to whether the injury actually was inflicted in the air or upon crashing into the water. The lower federal courts generally have held that the Death Act covers such accidents, usually on the ground that the *lex loci* is maritime law and that the Death Act is a part of such law. See, *e.g., D'Aleman* v. *Pan American World Airways,* 259 F. 2d 493 (C.A. 2); *Wilson* v. *Transocean Airlines,* 121 F. Supp. 85 (N.D. Calif.); Comment, 55 Colum. L. Rev. 907 (1955). In the *D'Aleman* case the court, in ruling that "the Death on the High Seas Act grants a right of action in admiralty for death caused by wrongful act, neglect or default occurring in the air space over the high seas" (p. 496), stated (p. 495):

> The purpose of the Act was to create a uniform cause of action where none existed before

> and which arose beyond the territorial limits of the United States or any State thereof. When the Act was passed (March 30, 1920) the only feasible way to be carried beyond the jurisdiction of any law applicable to wrongful death was by ship. However, with the development of the transoceanic airship the same extraterritorial situation was made possible in the air. The Act was designed to create a cause of action in an area not theretofore under the jurisdiction of any court. The means of transportation into the area is of no importance. The statutory expression "on the high seas" should be capable of expansion to, under, or, over, as scientific advances change the methods of travel. * * *

If an accident in an airplane thousands of feet above the surface nevertheless occurs "on the high seas," *a fortiori* an accident on a platform only a few feet above the water meets that standard.

3. The problem in the present case is quite unlike that in *Nacirema Operating Co., Inc.*, and *John P. Traynor* v. *Johnson*, Nos. 528 and 663, this Term, which the Court on May 19, 1968, set for reargument next Term. The government there contends that the Longshoremen's Act, which applies to injuries occurring "upon the navigable waters of the United States," does not cover injuries suffered by longshoremen on piers while loading a ship's cargo.

In the first place, the offshore platforms involved in the present case are wholly at sea, completely surrounded by water, with no connection with the land; in the *Nacirema* case, on the other hand, the piers are directly attached to the land and traditionally have been viewed in admiralty as extensions thereof.

Equally, if not more, important is the fact that the legislative history of the Longshoremen's Act, as this Court frequently has recognized, shows that Congress intended in that Act to embody the line of demarcation between State and federal authority over maritime matters that this Court established in *Southern Pacific Co.* v. *Jensen,* 244 U.S. 205, and related cases—a line based on a more limited view of the federal constitutional admiralty power than exists today. See our brief in *Nacirema,* pp. 10–15. In short, Congress there was trying to limit federal law to areas not a part of or attached to the shore or mainland. In the present case, on the other hand, these platforms were clearly within admiralty jurisdiction as it existed when the Death Act was passed in 1920, and there is no indication that Congress intended to limit the reach of the Death Act to ships.

III. THE APPLICATION OF THE DEATH ON THE HIGH SEAS ACT TO ACCIDENTS OCCURRING ON OFF-SHORE DRILLING PLATFORMS WOULD NOT VIOLATE CONSTITUTIONAL RESTRICTIONS ON THE SCOPE OF ADMIRALTY JURISDICTION

We perceive no constitutional barrier to the application of the Death on the High Seas Act to drilling platform accidents. Such application would not be incompatible with the view of maritime jurisdiction reflected in *Phoenix Construction Co.* v. *The Steamer Poughkeepsie,* 212 U.S. 558, affirming *per curiam* 162 Fed. 494 (S.D. N.Y.), to which the Court has directed the parties' attention. That case was an *in rem* action in admiralty against a vessel which had collided with a platform in the Hudson River housing several borings that had been drilled in order to locate a

submerged aqueduct. Viewing the damaged project as "not even suggestive of maritime affairs," and relying upon *Cleveland Terminal R.R. Co.* v. *Cleveland S.S. Co.*, 208 U.S. 316, the district court ruled that admiralty jurisdiction did not cover the case (162 Fed. at 496).

The district court's reliance on *Cleveland Terminal* is significant, for it is illustrative of the long line of cases in this Court dealing with injuries to bridges, docks, piers, and other similar structures which have been viewed as physical extensions of the shore.[13] Thus, in *Cleveland Terminal*, it was held that there was no admiralty jurisdiction over an action for damages inflicted by a vessel to a pier of a bridge over the Cuyahoga River. The ground for these decisions was that such structures pertained to the land and were utilized to aid commerce on land. Accordingly, the causes of action were held to be beyond the reach of the historical limits of admiralty jurisdiction and remedies. See, *e.g.*, *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U.S. 388, 397.

The offshore oil drilling platforms involved in the present case, although fixed to the subsoil, are not connected to the shore. They are far out at sea, completely surrounded by water. This Court has relied on that fact to distinguish the *Cleveland Terminal* line of cases in holding that suits for injury to such structures are cognizable in admiralty. See *Doullut &*

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[13] See, *e.g.*, *T. Smith & Son, Inc.* v. *Taylor*, 276 U.S. 179; *The Panoil*, 266 U.S. 433; *Martin* v. *West*, 222 U.S. 191; *The Troy*, 208 U.S. 321; *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U.S. 388; *Ex Parte Phenix Insurance Co.*, 118 U.S. 610; *The Plymouth*, 3 Wall. 20.

Williams Co. v. *United States*, 268 U.S. 33; *The Raithmoor*, 241 U.S. 166; *The Blackheath*, 195 U.S. 361; *Atlee* v. *Packet Co.*, 21 Wall. 389; Hughes, *Admiralty* (2d Ed.), § 100. See also the Extension of Admiralty Jurisdiction Act, 46 U.S.C. 740; *Gutierrez* v. *Waterman S.S. Corp.*, 373 U.S. 206, 210. As Mr. Justice Holmes observed in *The Blackheath*, 195 U.S. 361, 365, referring to a beacon located in the middle of a river and resting on piles driven into the bottom,

> * * * [I]t seems more arbitrary than rational to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was * * * no part of the shore, but surrounded on every side by water, a mere point projecting from the sea.[14]

The district court in *The Poughkeepsie* distinguished *The Blackheath* on the ground that Mr. Justice Holmes' description of the beacon as an "aid to navigation" was an independent test for admiralty jurisdiction over offshore structures, which was not satisfied by the drilling operation in that case. Although the "aid-to-navigation" inquiry appears to have been enlarged beyond its original significance[15] and to have increased the number of imponderable dis-

[14] The beacon "is only technically land, through a connection at the bottom of the sea. In such a case [maritime] jurisdiction may be taken without transcending the limits of the Constitution * * *." 195 U.S. 361, 367–368. See concurring opinion of Mr. Justice Brown, 195 U.S. at 368–369: "The distinction between damage done to fixed and to floating structures is a somewhat artificial one, and, in my view, founded upon no sound principle."

[15] In *The Blackheath* itself, Mr. Justice Holmes cited with approval *The Arkansas*, 17 Fed. 383 (S.D. Iowa), which had also adopted the distinction between structures contiguous with the

tinctions in the maritime law,[16] the offshore platforms involved here may reasonably be found to satisfy that requirement, if applicable. Unlike the dangerous impediment to navigation involved in *The Poughkeepsie,* offshore oil drilling platforms undoubtedly provide some incidental assistance to navigators in fixing their positions. Moreover, maritime navigation is extensively involved in offshore drilling operations because the platforms are accessible, except for helicopter flights, only by boat.

It also may be argued that the rules developed in the *Cleveland Terminal* line of cases are not conclusive on the question whether maritime law applies to personal injury actions arising on offshore structures. Whatever policies may have justified the denial of admiralty remedies to the owner of a pier or bridge which was damaged by a vessel—an inquiry of only historical significance since that rule was abrogated by the Extension of Admiralty Jurisdiction Act—it would not necessarily follow that the same narrow view of admiralty jurisdiction is justified in cases where the issues involve personal safety and the loss of earning capacity or support. In this situation, the

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shore and those surrounded by water. *The Arkansas*, however, was not concerned with a structure which aided navigation, but with an isolated oil storage depot in the middle of the Mississippi River. Similarly, in *Atlee*, *supra*, this Court, applying the admiralty jurisdiction to a storage pier located in the middle of a river, expressly recognized that the pier was in no way an aid to navigation (21 Wall. at 394). See, *The Raithmoor*, *supra*.

[16] Compare *The Panoil*, 266 U.S. 433, with *Doullut & Williams Co.* v. *United States*, 268 U.S. 33; see Robinson, *Tort Jurisdiction in American Admiralty*, 84 U. Pa. L. Rev. 716, 718–726 (1936).

courts may properly take account of the fact that workmen on offshore platforms frequently are exposed to some of the same hazards of the sea which characterize employment aboard a vessel. See *Pure Oil Co.* v. *Snipes*, 293 F. 2d 60 (C.A. 5).

CONCLUSION

For the foregoing reasons, the question framed by the Court in its order of April 2 should be answered affirmatively.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
WILLIAM D. RUCKELSHAUS,
Assistant Attorney General.
MORTON HOLLANDER,
ROBERT M. HEIER,
Attorneys.

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